IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No. 18 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF WEALTH-TAX - Applicant(s)
Versus
VINUBHAI H PANCHAL - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mrs. Bhatt, learned counsel for the Revenue. None for the respondent assessee, the office report shows that the respondent is served.

2. The Income Tax Appellate Tribunal has referred to this Court the following question;

> "Whether the Appellate Tribunal is right in law and on facts in directing the Wealth-tax Officer to adopt the value of the properties i.e. (a) L.N. Talkies at Rs. 3,84,000/-, (b) Laxmi Talkies at Rs. 6,20,000/- as against the value of Rs. 15,82,000/- and Rs. 20,70,000/- respectively adopted by the Wealth tax Officer in the assessment as determined by the Departmental Valuation Officer?"

3. Mrs. Bhatt, learned counsel for the Revenue submits that the Tribunal had relied upon

its earlier decision in assessee's own case for accounting year 1976-77 to 1979-80 and confirmed the order of C.W.T.(A). The Tribunal observed that at the time of hearing, the parties admitted that facts relating to the year under consideration and the two properties in question were the same.

4. She submits that at the request of the Revenue a Reference was made by the Income Tax Appellate Tribunal in relation to the Assessment Year 1976-77 (the order on which the Tribunal subsequently relied upon). According to her the said Reference was registered as Wealth Tax Reference No. 8 of 1988 and was ultimately answered in favour of the Revenue observing that the Tribunal clearly overlooked the fact that so-called fresh or independent determination made by the W.T.O., for the Assessment Year 1976-77 was limited only to renovation of the building etc. She submits that the order of the Tribunal, so

far as it relates to the Assessment Year 1976-77, if held to be bad then the very foundation for the present order would become *non-est.* She submits that the Reference be answered in favour of the Revenue.

5. After hearing the representative of the Revenue, we have also gone through the said judgment in WTR No. 8 of 1988.

6. We are in agreement with the submissions made by Mrs. Bhatt that the very foundation for the present order is not available and as such the order passed by the Income Tax Appellate Tribunal has become bad in law. Once we hold so, then we will not be entitled to enter into the merits of the matter, but we will have to refer the matter back to the Income Tax Appellate Tribunal to redecide the matter on merits.

7. The Reference will have to be answered in favour of the Revenue because of the subsequent Judgment of this Court, but the matter is remanded to the Tribunal with a direction that it would not be entitled to rely upon the earlier orders passed by the Income Tax Appellate Tribunal, and it has to decide the matter on merits. No order as to costs.

[R.S. Garg, J.]

[M.R. Shah, J.]

RMR.